IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 218 OF 2000.

Gomantak Mazdoor Sangh,
a Trade Union, registered under the
Trade Unions Act, 1926, having its
office at Kamakshi Niwas, Ponda,
Goa, represented through its
General Secretary. .... Petitioner.

Versus

Mormugao Port Trust,
having office at Mormugao Harbour,
Vasco-da-Gama, Goa, represented
through the Chairman of its Board
of Trustees, having his office at
Mormugao Harbour, Vasco-da-Gama,
Goa. .... Respondent.

Shri G. Sardessai, Advocate for the Petitioner.

Shri V.B. Nadkarni, Senior Advocate with Shri Y.V. Nadkarni, Advocate for the Respondent.

CORAM: A.P. LAVANDE &
N. A. BRITTO, JJ.

DATE: 23rd February, 2005.

J U D G M E N T: (PER BRITTO, J.)

The petitioner-Trade Union representing workmen in various categories has made a grievance in this petition that seventeen of its members were not short-listed by the respondent-Mormugao Port Trust to

be called for physical test/interview to be selected as gang workers.

2. We have heard Shri G. Sardessai and Shri V.B. Nadkarni with Shri Y.V. Nadkarni, the learned counsel and Senior Counsel of the petitioner and the respondent, respectively.

3. The dock work including the work of gang workers at the Mormugao Port Trust was regulated by the Dock Labour Board under a scheme known as Mormugao Dock Workers (Regulation of Employment) Scheme, 1965 framed under the Dock Labour Board (Regulation of Employment) Act, 1948. Subsequently Parliament enacted what is known as the Dock Workers Regulation of Employment (Inapplicability to Major Ports) Act 1997 and with effect from 31.3.1998 the said Dock Labour Board came to be merged as one of the Departments of Mormugao Port Trust with all its debts, obligations and liabilities.

4. The gang workers whose names have been enlisted in Annexure E to the petition were working for the Mini-Pool operated by Mormugao Handling Agents Association, since dissolved. The petitioner filed W.P. No.261/99 before this Court for a declaration that their members were regular workers of the Mormugao Port Trust and therefore were entitled to benefits as other regular workmen of the Mormugao Port Trust and that

they too be absorbed in Mormugao Port Trust.

5. Meanwhile by advertisement dated 11.3.2000 the Mormugao Port Trust invited applications to fill 100 posts of gang workers (out of which one was reserved for S.C., five for S.T. And 5 for O.B.C.) in the vacancies which would result in May, 2000. As per the said advertisement the qualifications required were that they had to be literate and having the ability to carry 50 kgs. of cover weight, good physique to carry out manual work connected with loading, unloading etc. The age limit was 40 years as on 31.5.2000, relaxable by five years for OBC/SC/ST candidates. Meanwhile the W.P. No.261/99 came to be decided by this Court on 3.5.2000, as a result of which eligible candidates were given option to file their applications with details and supporting documents till 15.5.2000. The M.P.T. Was required to duly consider the applications to be made by the said gang workers. Accordingly the date was extended by Mormugao Port Trust to 15.5.2000 to enable the candidates to file their applications with supporting documents. A committee of 5 senior Port officers was constituted by the Chairman to scrutinize the applications and to short list candidates to be called for the interview amongst those who satisfied the eligibility criteria namely that :-

(a) Applicants who had failed to enclose certified copies of the testimonials along with their applications were to be excluded;

(b) Only those who had not acquired educational qualifications of S.S.C. and above were to be called for interview, since those who passed S.S.C. other avenues of employment were available.

© Candidates not exceeding 40 years of age as on 31.5.2000 only were to be considered with relaxation upto 5 years being given to those belonging to ST/SC and 3 years in case of candidates belonging to O.B.C.

After following the said criteria about 1298 applicants out of total number of 5476 were short-listed to be called for physical test/interview and a selection list of 100 candidates and a waiting list of 364 candidates was finalized. As per Order of this Court dated 20.9.04 the respondent/MPT was directed to file an affidavit-in-reply. The grievance of the petitioner is that the applicants at serial Nos.1 to 4 of Annexure E were not considered on the specious plea that their educational qualification is S.S.C. And therefore they were highly qualified. It was the contention of the petitioner that this so called highly qualified applicants were in employment as manual workers in the Dock for a period ranging from 15 to 20 years and that the qualification of SCLC was neither high in the context of past employment nor in the context of nature of work.

6. The next grievance of the petitioner was that the applicant No.5 was not considered as he produced the original birth certificate and not certified copy as referred to in the advertisement.

7. Further grievance of the petitioner was that the applicants at serial No.7 to 11 were not considered as they produced the identification card issued by the Election Commission as proof of their birth and they failed to produce birth certificates.

8. Lastly, the grievance of the petitioner was that the applicants at Serial No.12 to 17 of the said Annexure E were not considered as they could not produced the caste certificates.

9. The respondent in their affidavit dated 6.11.04 have stated that the applicants at serial Nos.1 to 4 were not short-listed as they had acquired S.C.C. qualification and as per the criteria adopted by the respondent, was to short-list only those who had studied upto Std.IX or S.S.C. Failed in order to provide adequate employment to those who are not highly educationally qualified and to whom other avenues of employment are not available. In the said affidavit it has been stated that the applicant at serial No.5 was subsequently appointed as a gang worker. As far as applicants No.6 to 11, the respondent has stated that they had failed to produce their birth certificates in support of proof of their age and the dates of birth in the election cards were not acceptable as proper evidence to prove the date of birth. As far as applicants No.12 to 17 are concerned, the respondent has

stated that they failed to produce their caste certificates along with their applications inspite of the fact that time was extended from 31.3.2000 to 15.5.2000 in view of the Order of this Court dated 3.5.2000.

10. In our view the criteria adopted by the respondent-MPT to fill the post of gang workers by calling for interview only those who satisfied the criteria set out by them cannot be faulted. Considering the post of gang worker where manual work is required to be done the criteria that only those who studied upto Std.IX or S.S.C. failed, cannot be termed as unreasonable as those who pass S.S.C. many other avenues are open to them. We are satisfied that the Respondent short listed the candidates as per criteria laid down by them and only those who satisfied with the criteria were called for interview.

11. In our view there is no merit in this petition and otherwise also the same has become infructuous. Consequently, we hereby dismiss the petition and discharge the Rule, leaving the parties to bear their own costs.

A. P. LAVANDE, J.

sl. **N. A. BRITTO, J.**